

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Mescalero Apache School	)	File No. SLD-317139
Mescalero, New Mexico	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: December 20, 2002**

**Released: December 23, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Mescalero Apache School (Mescalero), Mescalero, New Mexico.<sup>1</sup> Mescalero seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Mescalero's appeal on the grounds that it was untimely filed.<sup>2</sup> For the reasons set forth below, we affirm SLD's rejection and deny Mescalero's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on July 1, 2002, denying Mescalero's request for discounted services under the schools and libraries universal service support mechanism.<sup>3</sup> Specifically, SLD denied Mescalero's request for discounts for internal connections, Funding Request Number (FRN) 838498.<sup>4</sup> On September 10, 2002, Mescalero filed an appeal of SLD's decision.<sup>5</sup> On September 11, 2002, SLD issued an Administrator's

<sup>1</sup> Letter from Ray Swinney, Mescalero Apache School, to Federal Communications Commission, filed October 30, 2002 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Gino Wilcox, Mescalero Apache School, dated July 1, 2002 (Funding Commitment Decision Letter).

<sup>4</sup> *Id.*

<sup>5</sup> Letter from Ray Swinney, Mescalero Catholic School, to Schools and Libraries Division, Universal Service Administrative Company, filed September 10, 2002 (Request for Administrator Review).

Decision on Appeal indicating that it would not consider Mescalero's appeal because it was received more than 60 days after the July 1, 2002 Funding Commitment Decision Letter was issued.<sup>6</sup> Mescalero subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued on or after August 13, 2001 under section 54.720(b) of the Commission's rules, any such appeal must be filed with the Commission or SLD within 60 days of the issuance of the decision that the party seeks to have reviewed.<sup>7</sup> Documents are considered to be filed with the Commission only upon receipt.<sup>8</sup> Because the instant Request for Review was not filed within the requisite 60-day period, Mescalero's Request for Administrator Review, we affirm the Administrator's Decision on Appeal and deny the instant Request for Review.

4. To the extent that Mescalero is requesting that we waive the 60-day deadline established in section 54.720(b) of the Commission's rules we deny that request as well.<sup>9</sup> The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.<sup>10</sup> Mescalero has not shown good cause for the untimely filing of its initial appeal. Mescalero states that it has been in a transition period from late June through August, moving its entire school district to a new school facility.<sup>11</sup> Further, Mescalero states that much of the mailed received during that period of time was not delivered to the appropriate offices and that letter notifying the school of the non-funded status of its request for funding was not read until August 13, 2002.<sup>12</sup>

5. We conclude that Mescalero has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>13</sup> In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits.

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<sup>6</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Ray Swinney, Mescalero Apache School, dated September 11, 2002 (Administrator's Decision on Appeal).

<sup>7</sup> 47 C.F.R. § 54.720(b). *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 17 FCC Rcd 339 (Com. Car. Bur. rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002).

<sup>8</sup> 47 C.F.R. § 1.7.

<sup>9</sup> *See* 47 C.F.R. § 54.720(b).

<sup>10</sup> *See* 47 C.F.R. § 1.3.

<sup>11</sup> Request for Review at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.<sup>14</sup> In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, Mescalero fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Mescalero Apache School, Mescalero, New Mexico, on October 30, 2002, and the request to waive the 60-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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<sup>14</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility for understanding all relevant program rules and procedures.").